

NOTICE OF PROPOSED RULEMAKING ACTION

CALIFORNIA SCHOOL FINANCE AUTHORITY

Sections 10176, 10177, 10178, 10179, 10180, 10181, 10182, 10183, 10184, 10185, 10186, 10187, 10188, 10189, and 10190

Title 4, Division 15, Article 2 California Code of Regulations

NOTICE IS HEREBY GIVEN that the California School Finance Authority (Authority), organized and operating pursuant to Sections 10176 through 10191 of the Education Code, proposes to amend the regulations described below after considering all comments, objections, and recommendations regarding the proposed action. Any person interested may present written statements or arguments relevant to the proposed action to the attention of the Contact Person as listed in this Notice no later than 5:00 p.m. on Monday, September 18, 2017. The Authority Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposal substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person(s) designated in this notice as contact person and will be mailed to those persons who submit statements related to this proposal or who have requested notification of any changes to the proposal.

Proposed Regulatory Action

The Authority proposes to amend Sections 10176, 10177, 10178, 10179, 10180, 10181, 10182, 10183, 10184, 10185, 10186, 10187, 10188, 10189, and 10190 of Title 4 of the California Code of Regulations (Regulations) as permanent regulations. The amended Regulations implement Authority's responsibilities related to the Charter School Facility Grant Program (Program).

Authority and Reference

Authority: Section 17179 and 17180 of the Education Code. Section 17179 provides CSFA with the authority to do all things reasonably necessary to carry out its responsibilities. Section 101780(a) of the Education provides CSFA the authority to adopt bylaws for the regulation of its affairs and the conduct of its business. Subdivision (d) provides CSFA with the authority to receive and accept grants from the federal government. Subdivision (o) allows CSFA the authority to adopt guidelines for grants.

Reference: Education Code, Section 17180(d) of the Education Code; and Section 47600, et seq., of the Education Code. These Regulations implement the State Charter School Facilities Incentive Grants Program (Grant) and include a number of the requirements of that program contained in the reference code provisions and their implementing Regulations. They also rely on a number of provisions in the Charter Schools Act of 1992, commencing with section 47600 of the Education Section. Section 17180(d) provides CSFA with the authority to receive grants from the federal government.

Informative Digest/Policy Statement Overview

The Authority was created in 1985 to assist school districts and community college districts in financing school construction projects (Education Code Section 17170, et seq.). The Authority is authorized to adopt bylaws for the regulation and conduct of its business, and is vested with all powers reasonably necessary to carry out its powers and responsibilities (Education Code Sections 17179 and 17180).

In 2004, 2009 and 2014, the United States Department of Education approved grant awards to CSFA pursuant to the State Charter School Incentive Grant (Grant), authorized under Title V, Part B, Subpart 1 of the Elementary and Secondary Education Act, as amended by the No Child Left Behind Act of 2001. The Grant provided for \$49,250,000 in 2004, \$46,132,749 in 2009, and \$50,000,000 in 2014, to be awarded over five-year periods for the purposes of funding per-pupil facilities aid programs for California charter schools. Grant funds may be applied toward a charter school's annual costs of rent, lease, mortgage, debt service, or Proposition 39 pro-rata payments for facilities, or towards the costs of purchase, design, construction, and/or renovation of a new or existing facility.

Pursuant to the federal rules governing the Grant, an annual portion of funds must be allocated during each of five consecutive federal fiscal years. The first funding round began on June 28, 2005, when an emergency rulemaking file was approved by the Office of Administrative Law. Permanent Regulations implementing the Grant were approved March 24, 2006.

The Authority adopted emergency regulations through the Office of Administrative Law's (OAL's) Emergency Rulemaking procedures, and such emergency regulations were approved by OAL on April 27, 2017 (OAL Regulatory Action # 2015-0417-01E). In order to establish permanent regulations for purposes of administration of the Program, the Authority is proposing permanent regulations through OAL's permanent rulemaking process and through submission of a Certificate of Compliance.

The allocation of these grant funds to eligible charter schools are based on preference points assigned for certain factors, including the low income population served by the school as reported by the percentage of students eligible to receive free and reduced price meals, the school's nonprofit status, whether a school is located in an overcrowded attendance area, whether the school has previously received a Program award, the school's academic performance as measured by its Annual Performance Index (API), and the school's academic performance in comparison to nearby schools as measured by and Adequate Yearly Progress (AYP). However as the California Department of Education (CDE) no longer uses API and AYP as metrics, these Regulations are being presented in part to replace API and AYP with the Smarter Balanced Assessment System currently employed by CDE.

The amendments to the Regulations are briefly summarized below and are intended to address the following: (1) the aforementioned change in CDE evaluation criteria from API and AYP to Smarter Balanced; (2) establish criteria the Authority will use to assess a charter school's operational and financial autonomy from their charter authorizer; (3) clarify ineligible costs; (4) solidify deadlines for forms and communications from applicants,

subgrantees and the Authority itself on corrective actions when deadlines are not met; (5) separates the policy language and requirements of construction/renovation applicants from that language for facility purchase applicants; (6) omits language that is no longer relevant to the Grant program; (7) omits redundant language; and (8) revises language to more accurately reflect current processes and timelines based on actual practice with current workload and staffing levels.

The Authority has conducted an evaluation as to whether there are any related regulations on this matter and has found that these are the only regulations dealing with this type of program. Therefore the proposed regulations do not present any inconsistencies or incompatibilities with existing state regulations.

Anticipated Benefits of Proposed Regulations

Please see “Results of Economic Impact Assessment” item “d,” for a description of benefits.

The amended Regulations are summarized below. The reader is referred to the Initial Statement of Reasons for a detailed explanation regarding the necessity of each amendment.

Section 10176 (“Definitions”):

The amended Section sets forth the following changes: (1) deletes reference to API and AYP and replaces it with Smarter Balanced Assessment System; definitions added for “Average Daily Attendance” and “Enrollment”; (2) clarification on Davis Bacon and Related Acts and their application to the Grant program.

Section 10177 (“Eligible Applicant”):

The amended Section adds subdivision (d)(1) & (2) to establish the criteria the Authority will use to assess a charter school’s degree of financial and operational autonomy from their charter authorizer. Further the language establishes the documentation the Authority can request from schools to confirm autonomy. Language has also been added to expand the degree to which a school can demonstrate cost eligibility.

Section 10178 (“Eligible and Ineligible Costs”):

Along with nonsubstantive language changes primarily involving acronyms, the amended Section removes redundant terms and adds “Ineligible Costs” to the title for purposes of clarity.

Section 10179 (“Maximum Grant”):

The amended Section adds subdivision (e), which clarifies the Authority’s ability to reduce award amounts in cases where a subgrantee’s enrollment/lease costs/other circumstances may have changed and asserts the Authority’s inability to enhance rewards in inverse cases.

Section 10180 (“Application Submission”):

The amended Section requires applications for grant funds to be made via online form and adds new language in subdivision stating that before an applicant is deemed ineligible for submitting an incomplete application, the application will be notified of any deficiencies and given the opportunity to cure. In addition, subdivision (c) extends the date for grant awards from June 30th to August 31st of each fiscal year.

Section 10181 (“Content of Application”):

The amended Section sets forth the following changes: (1) changes to reflect the change to an online application, including the deletion of requirements for original executed signatures submitted via hard copy, (2) clarification that subgrantees must comply with Davis Bacon and Other Acts with respect to prevailing wage requirements for Grant funds; (2) new language strengthening the Authority’s ability to enforce forfeitures of loan if a subgrantee is declared ineligible and clarification that loan reverts to the Authority if forfeited.

Section 10182 (“Evaluation Criteria”):

The amended Section replaces API and AYP with Smarter Balanced Assessment Standards data when evaluating student performance in English Language Arts/Literacy and Mathematics for assigning preference points.

Section 10183 (“Award Methodology”):

The amended Section has added language regarding Preference Points that were otherwise alluded to but never specified.

Section 10184 (“Approval of Grant and Notification of Subgrantee”):

The amended Section has added language specifying that applicants will be notified of awards within 7 days of the CSFA Board meeting where subgrantees are approved.

Section 10185 (“Obligation and Expenditure of Grant Funds”):

The amended Section includes a new paragraph giving non-responsive subgrantee 90 days to resolve their outstanding issues before the subgrantee is declared ineligible to receive remaining disbursements, with forfeited funds reverting to the Authority.

Section 10187 (“Grant Agreements”):

The amended section specifies that subgrantee that change their school name, facility address and/or charter authorizer must notify the Authority within 30 days of the change.

Additionally “the end of each Academic Year” has replaced “Information Day” as the 30 day deadline for when California Longitudinal Pupil Achievement Data System (CALPADS) or California Basic Educational Data System (CBEDS) enrollment data must be reported to the Authority.

Section 10188 (“Release of Funds”):

The amended Section reorganizes language to present the material in a more coherent manner, broken down by project type. Subdivision (a)(1)(f) specifying the Legal Status Questionnaire (LSQ) as an enforcement tool for the Authority is moved to this section from its previous location in Section 10190 as it is a requirement for the release of funds and is not related to audits or conflicts of interest. The LSQ discloses information relating to any legal or regulatory proceedings or investigations in which the subgrantee or their affiliate may have been a party and which may have a material impact on the financial or educational viability of the charter school.

Subdivisions(a)(2)(A-J) are newly added, documenting the procedures and policies for release of funds for construction projects. Similarly subdivisions(a)(3)(A-J) have been added documenting the same procedures and policies for acquisition projects. Previously construction/renovation and purchase projects were bundled in policy language together but have now been separated.

Section 10189 (“Completion of Grant Funded Construction Project”):

The amended section includes the addition of the phrase “prior to final disbursement” to clarify that documentation specified in subdivision (a)(1) is required prior to final disbursement.

Section 10190 (“Audits and Conflicts of Interest”):

The amended Section clarifies that subgrantees must comply with Davis Bacon and Related Acts. The contract amount has been removed to avoid having to revise regulations each time the Davis Bacon and Related Acts threshold is revised. Provisions related to the LSQ have been relocated to Section 10188.

Other Matters Prescribed by Statutes Applicable To the Specific State Agency or to any Specific Regulation or Class of Regulations

No other matters prescribed by statute are applicable to the Authority or to any specific Regulation or class of Regulations pursuant to Section 11346.5(a) (4) of the California Government Code pertaining to the proposed Regulations or the Authority.

Mandate on Local Agencies or School Districts

The Authority has determined that the Regulations do not impose a mandate on local agencies or school districts.

Fiscal Impact

The Authority has determined that the Regulations do not impose any additional cost or savings to any state agency, any costs to any local agency or school district requiring reimbursement under Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code, any other non-discretionary cost or savings to any local agency, or any cost or savings in federal funding to the State.

Initial Determination Regarding any Significant, Statewide Adverse Economic Impact Directly Affecting Business

The Authority has made an initial determination that the Regulations will not have any significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Effect on Small Businesses

The Authority has determined that the adoption of the Regulations will not affect small business. The Program is a voluntary Grant program available to charter schools to assist in the costs of charter school facilities.

Cost Impacts

The Authority is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Assessment of Effect on Jobs and Business Expansion, Elimination or Creation

Adoption of these regulations will not: (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.

Cost Impact on Housing

The Regulations will not have any effect on housing costs.

Results of Economic Impact Assessment

The proposed regulations will unlikely have an impact on the creation or elimination of jobs within the State of California. In addition, the Authority is unaware of any reason providing Grant funds to awardees would result in the elimination of jobs. The purpose of the proposed regulations is to set forth administrative criteria and requirements for a Grant program that will disburse funds to existing charter schools in need across the State of California for per pupil facilities funding. There are no provisions within the proposed regulations which place additional burdens, obligations, or expenses on existing businesses such that jobs would be created or eliminated as a result.

The proposed regulations will unlikely have an impact on the creation or elimination of new businesses within the State of California. As noted above, the purpose of the proposed regulations is to set forth administrative criteria and requirements for a Grant program that provides per pupil facilities funding to existing charter schools in need. There are no provisions within the proposed regulations which place additional burdens, obligations, or expenses on existing businesses such that businesses would be created or eliminated as a result of the proposed regulations.

The proposed regulations will unlikely have an impact on the expansion of businesses currently doing business within the State of California. The purpose of the proposed regulations is to set forth uniform and consistent criteria to administer a Grant program that will provide per pupil facilities funding to existing charter schools.

The proposed regulations are intended to provide per pupil facilities funding to existing charter schools in need, especially serving communities with low-income households. As such, to the extent that the awards benefit the long-term viability of charter schools, the Program and its proposed regulations have the potential to directly benefit economically vulnerable populations and communities throughout the State.

Reasonable Alternatives

In accordance with Government Code Section 11346.5(a)(13), the Authority must determine that no reasonable alternative to the Regulations considered by the Authority or that has otherwise been identified and brought to the attention of the Authority, would be more effective in carrying out the purpose for which the Regulations are proposed or would be as effective and less burdensome to affected private persons than the Regulations, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Authority invites interested persons to present statements with respect to alternatives to the Regulations during the written comment period.

Agency Contact Person(s)

Written comments, inquiries, and any questions regarding the substance of the Regulations shall be submitted or directed to:

Katrina Johantgen, Executive Director
California School Finance Authority
at:

300 S. Spring Street, Suite 8500
Los Angeles, CA 90013
(213) 620-4608

or

915 Capitol Mall, Room 516
Sacramento, CA 95814
(916) 651-7710

or

kjohantgen@treasurer.ca.gov

or

csfa@treasurer.ca.gov

The following person is designated as a backup Contact Person for inquiries only regarding the Regulations:

Mark Paxson, General Counsel
State Treasurer's Office
915 Capitol Mall, Room 110
Sacramento, CA 95814
(916) 653-2995

Written Comment Period

Any interested person, or his or her authorized representative, may submit written comments relevant to the Regulations to the Authority. The written comment period on the Regulations will end at 5:00 p.m. on Monday, September 18, 2017. All comments to be considered by the Authority must be submitted in writing to the Agency Contact Person identified in this Notice by that time. In the event that changes are made to the Regulations during the written comment period, the Authority will also accept additional written comments limited to any changed or modified Regulations for 15 calendar days after the date on which such Regulations, as changed or modified are made available to the public pursuant to Title 1, Chapter 1, Section 44 of the California Code of Regulations. Such additional written comments should be addressed to the Agency Contact Person identified in this Notice.

Availability of Initial Statement of Reasons, Rulemaking File and Express Terms of Proposed Regulations

The Authority has established a rulemaking file for this regulatory action, which contains those items required by law. The file is available for inspection at the Authority's office at 915 Capitol Mall, Suite 516, Sacramento, California, during normal business hours. As of the date this Notice is published in the Notice Register, the rulemaking file consists of this Notice, the Initial Statement of Reasons, and the proposed text of the Regulations. Copies of these items are available upon request, from the Agency Contact Person designated in this Notice. The Sacramento address will also be the location for inspection of the rulemaking file and any other public records, including reports, documentation and other materials related to this proposed regulatory action. In addition, the rulemaking file, including the Initial Statement of Reasons and the proposed text, may be viewed on the Authority's Web site at www.treasurer.ca.gov/csfa.

Public Hearing

No public hearing regarding the Regulations has been scheduled. Anyone wishing a public hearing must submit a request in writing, pursuant to Section 11346.8 of the Government Code, to the Authority at least 15 days before the end of the written comment period. Such request should be addressed to the Agency Contact Person identified in this Notice and should specify the Regulations for which the hearing is being requested.

15-Day Availability of Changed or Modified Text

After the written comment period ends and following a public hearing, if any is requested, the Authority may adopt the Regulations substantially as described in this Notice, without further notice. If the Authority makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public (including through the Authority's Web site described above) for at least fifteen (15) calendar days before the Authority adopts the proposed Regulations, as modified. Inquiries about and requests for written copies of any changed or modified regulations should be addressed to the Agency Contact Person identified in this Notice.

Availability of Final Statement of Reasons

The Authority is required to prepare a Final Statement of Reasons pursuant to Government Code Section 11346.9. Once the Authority has prepared a Final Statement of Reasons, a copy will be made available to anyone who requests a copy and will be available on the Authority's Web site described above. Written requests for copies should be addressed to the Agency Contact Person identified in this Notice.